

**REMARKS**

Claims 1, 3-7 and 9-12 are all the claims pending in the application; each of the claims is rejected.

Claim 1 has been amended to correct an obvious typographical error. Claim 3 has been amended to remove its dependency on claim 1. Claim 10 has been amended to remove recitation of the form into which the food composition may be made.

No new matter has been added. Entry of the amendment is earnestly solicited.

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**I. Rejection of Claims Under 35 U.S.C. §112**

A. At page 2 of the Office Action, claim 3 is rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written description support in the specification as filed.

Specifically, the Examiner states that there is no basis or support in the specification for the unequivocal designation of strains FERM BP-6436 and FERM BP-6437 as *S. intermedius* or *S. constellatus*. Further, the Examiner contends that the ATCC Catalog has reclassified these strains as *S. anginosus*, and therefore ambiguity as to the proper classification of these strains exists.

In response, Applicants have amended claim 3 to remove its dependency from claim 1. As a result, the ambiguity as to the species into which the two recited strains fall has been removed.

In view of the amendment to the claim, Applicants respectfully request reconsideration and withdrawal of the rejection.

B. At page 2 of the Office Action, claim 10 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Specifically, the Examiner states that claim 10 is vague and indefinite in the recitation of "a bar, granule, powder, capsule and tablet" since Claim 9, upon which it depends, pertains to a food composition. The Examiner contends that at least "a granule, capsule and tablet" are pharmaceuticals, rather than foods.

In response, Applicants note that included herein is a request to amend claim 10 to remove reference to the forms in which the food composition may be found. Thus, in view of the amendment to the claim, Applicants respectfully assert that the claim is now definite and

~~must be considered and withdrawal of this rejection~~

## **II. Rejection of Claims Under 35 U.S.C. §103**

At page 3 of the Office Action, claims 1-12 are rejected under 35 U.S.C. §103 as being unpatentable over Ishikawa et al., in view of Halpin-Dohnalek et al. and the ATCC Catalogue of Bacteria.

At page 4 of the Office Action, the Examiner contends that Applicants' amendment to the claims to recite strains *S. intermedius* and *S. constellatus* does not overcome the rejection since the classification of the two strains obtained by Applicants is ambiguous. Therefore, the Examiner contends that it is unclear to what extent these strains differ from *S. thermophilus* of Ishikawa et al. in their effects in the composition as claimed.

For the following reasons, Applicants' respectfully traverse the Examiner's rejection.

As discussed in the Amendment filed February 25, 2002, Ishikawa et al. is not legally-effective prior art in view of the filing of the Sworn Translation into English of Applicants' priority document (filed February 25, 2002).

More specifically, Applicants note that Ishikawa et al. was published on September 16, 1997, after Applicants' priority date of August 8, 1997. Hence, the Examiner's rejection has been rendered moot by the sworn translation into English of Applicants' priority document filed February 25, 2002.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

### III. Conclusion

~~In view of the above, reconsideration and allowance of this application are now believed~~  
to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims are amended as follows:

1. (Twice Amended) A composition comprising a daidzein-containing substance and at least one strain of microorganism capable of metabolizing daidzein to equol as essential ingredients, wherein ~~whereas~~-said strain is selected from the group consisting of *Streptococcus intermedius* and *Streptococcus constellatus*.

3. (Twice Amended) A ~~The~~-composition comprising a daidzein-containing substance and at least one according to claim 1 wherein the-strain of microorganism capable of metabolizing daidzein to equol as essential ingredients, wherein said strain is at least one ~~member~~-selected from the group consisting of *Streptococcus* E-23-17, which has been deposited as FERM BP-6436, and *Streptococcus* A6G-225, which has been deposited as FERM BP-6437.

10. (Twice Amended) The composition according to Claim 9, wherein the food composition is selected from the group consisting of a drink, dairy product, and fermented milk; ~~or said composition is in the form selected from the group consisting of a bar, granule, powder, capsule and, tablet.~~